

Opinion No. 3**SCHOOLS AND SCHOOL DISTRICTS; County high schools, establishment of branch in another town.**

Held: 1. That the board of trustees of a county high school does not have the authority to establish a branch of the county high school in another town or city in the county.

March 29, 1961

Mr. Harold J. Pinsoneault
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Pinsoneault:

You have requested my opinion as to whether a county high school may establish and construct a branch high school at a site within the county, but separate and at a distance from the present county high school.

The question you present was answered by this office in Opinion No. 6, Volume 21, Report and Official Opinions of Attorney General, where it was held:

"The board of trustees of a county high school has not the authority or power to establish a branch of the high school in another town in the county, other than the town selected at the election creating the county high school."

In the above opinion of this office, it was stated that at the time a county high school was established, the election specified the location of the county high school. An examination of the several statutes authorizing the establishment of a county high school reveals that in each instance a distinction was made between the location of a county high school in a particular city or town and the site of the school building within that city or town.

The first act of our Legislature, Substitute House Bill No. 69, Laws of 1899, authorized the establishment of county high schools. Section

2 of this act provided for an election, submitting the question whether a county high school shall be established. This statute provides in part as follows:

"The notices shall distinctly specify the city, town or district wherein it is proposed to establish said high school."

The actual selection of a site for such a high school was left to the board of trustees as Section 13 of the act provides in part as follows:

"The said board of trustees shall proceed as soon as practicable after the appointment aforesaid, to select at the place determined by the vote of the county, the best site that can be obtained and the title thereof shall be vested in the said county;"

A subsequent enactment of the Legislature, Chapter 29, Laws of 1907, which appears in the Political Code of 1907 as Sections 918-94 clarifies the manner of holding an election for the establishment of a county high school. Section 920 provided in part as follows:

"The qualified electors shall vote, by ballot, for or against the establishment of a county free high school, and any elector who shall vote for the establishment of the county free high school, may vote for not more than one of the places named upon said ballot as a candidate for the location of said school."

That there is a distinction between the location of the high school and the site is apparent when Section 930 of the Political Code of 1907 is considered, as this section provides:

"The said Board of Trustees shall proceed, as soon as practicable after their appointment and qualification, to select, at the place designated as the location for the county free high school, the best site that can be obtained, and the title thereto, upon securing said site by purchase or otherwise, shall vest in the county;"

The school laws were codified in Chapter 76, Laws of 1913, and the above cited sections of the 1907 Codes were repealed. This 1913 statute authorized the establishment of a county high school and Section 2102 of Chapter 76, Laws of 1913, required two ballots at the election relating to the establishment of a county high school. Ballot No. 1 submitted the question as to whether a county high school should be established and Ballot No. 2 submitted the question of a location of a county high school with the following statement:

"An elector desiring to vote for the location of a county high school at a certain place shall do so by placing an "X" before the name of the place desired for the location of such school."

That there was a difference between the location and the site is obvious when Subsection 7 (b) of Section 2104 of Chapter 76, Laws of 1913, is considered. There it was made the duty of the trustees "To proceed as soon as practicable after their appointment and qualification, to select at the place designated as the location for the county high school, the best site that can be obtained, . . ."

At the present time there is no method for the creation of a county high school as Chapter 148, Laws of 1931 repealed all of the provisions of Chapter 76, Laws of 1913, which granted such power to the people.

My reason for calling your attention to the above statutory distinctions between location and site is that in your letter you cited Sections 75-1632 and 75-4231, R.C.M., 1947, as amended, and conclude that these statutes, authorize a change of location. These statutes apply to the selection of a **site** within the town or city in which the county high school is located but do not authorize the selection of a new **location** of the county high school.

As was pointed out in the opinion of this office cited above there is no express statutory authorization for the establishment of a branch of the county high school. Our Supreme Court in the case of Schmiedeskamp v. School District 24, 128 Mont. 493, 278 Pac. (2d) 584, cited with approval the holding in McNair v. School District, 87 Mont. 423, 288 Pac. 188, 60 A.L.R. 866, and quoted the following:

"The board of trustees constitutes one board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercises of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board."

A similar conclusion was reached in the case of Abshire v. School District, 124 Mont. 244, 220 Pac. (2d) 1058, where the court stated:

"School trustees may lawfully exercise only such powers as the law confers upon them and the statute granting the powers must also be regarded as a limitation upon the powers granted."

To permit the establishment of a branch county high school some distance from the county high school, the location of which was approved by the electors at the time of the establishment of the county high school, would obviously violate the authority granted to the trustees by the statutes and also extend the scope of the statutes pertaining to county high schools far beyond what was ever intended.

While it is not now possible to establish a county high school, yet there is authorization for the establishment of a district high school by any school district which follows the procedures and meets the qualifications set forth in Sections 75-4138 and 75-4139, RCM, 1947.

The solution to the problem is to establish a district high school pursuant to Sections 75-4139 and 75-4140, R.C.M., 1947. The division of your county into high school districts in no way affects the method of establishing a district high school. High school districts are established for limited purposes and do not interfere with or repeal any existing laws relating to the maintenance and operation of high schools as is specifically stated in Section 75-4605, R.C.M., 1947.

It is, therefore, my opinion, that the board of trustees of a county high school does not have the authority to establish a branch of the county high school in another town or city in the county.

Very truly yours,
FORREST H. ANDERSON
Attorney General